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Veritas Health Services, Inc. d/b/a Chino Valley Medical Center and United Nurses Associations of California/Union of Healthcare Professionals, NUHHCE, AFSCME, AFL-CIO Cases 31-CA-029713, 31-CA-029714, 31-CA-029715, 31-CA-029716, 31-CA-029717, 31-CA-029738, 31-CA-029745, 31-CA-029749, 31-CA-029768, 31-CA-029769, 31-CA-029786, 31-CA-029936, 31-CA-029965, and 31-CA-029966

July 24, 2018

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND KAPLAN

This case is on remand from the United States Court of Appeals for the Ninth Circuit. The court has directed us to address whether our earlier decision, in which we found that the Respondent violated Section 8(a)(1) of the Act by broadly prohibiting employees from speaking to the media, should be revised to include an additional remedy directing the Respondent to rescind its written media communications policy to the same effect.¹ After carefully considering the record and the Respondent's position statement, and in light of the court's decision, we have decided to order the Respondent to rescind its written policy.²

Background

The underlying complaint alleged that the Respondent committed numerous unfair labor practices during and after a 2010 union organizing campaign. The complaint allegation at issue here asserted that the Respondent violated Section 8(a)(1) by "Instruct[ing] employees not to speak to third parties and/or the media about their protected concerted activities and/or their terms and conditions of employment." The record established that, following the election, the Respondent's CEO told unit employees that the Respondent would now be more vigorous about enforcing its policies, including previously unenforced policies, because the employees chose union representation. The Respondent's director of nursing

credibly testified that the CEO then instructed employees "not to discuss hospital matters with the media, because we do have policies in relation to discussing hospital matters with the media."

The CEO's oral ban referenced above was found to be unlawful and is closely related to a written policy in the Confidentiality section of the employee handbook. The written policy states:

The Facility draws a lot of attention from the media. Only the designated spokespersons may make statements to the members of the media on behalf of the Facility, its patients, or its employees. If you are approached by members of the media, refer them to Administration for assistance.

Board and Court Proceedings

The administrative law judge found that the Respondent violated Section 8(a)(1) by "broadly prohibiting employees from speaking to the media, including about the Union or about terms and conditions of employment" 359 NLRB 992, 1000 (2013). The judge concluded that he was precluded on due process grounds from finding that the written policy violated the Act because the General Counsel had not alleged that the written policy was unlawful in the complaint and did not challenge the written policy at the hearing or in his brief. *Ibid.* The Board adopted the judge's decision in pertinent part. 359 NLRB at 992-993. At the time of that Decision and Order, the composition of the Board included two recess appointees. After the Supreme Court held that the recess appointments were invalid in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), the Decision and Order was set aside. After considering the matter *de novo*, a duly constituted Board adopted the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB 992. See 362 NLRB No. 32, slip op. at 1-2 (2015).³ In adopting the judge's finding that the Respondent's oral ban against speaking to the media violated 8(a)(1) and his recommended cease-and-desist order for that violation, the Board did not comment on the Union's argument on exceptions that the Board should order the rescission of the written policy as an additional remedy.

Thereafter, the Respondent petitioned the United States Court of Appeals for the Ninth Circuit for review of the Board's Order. The Union also filed a petition for review arguing, in pertinent part, that the oral ban found to be unlawful reflected the written policy, and permitting the written policy to stand would undermine the

¹ *United Nurses Associations of California v. NLRB*, 871 F.3d 767, 790 (9th Cir. 2017).

² On December 15, 2017, the Board notified the parties that it had decided to accept the court's remand and invited them to file statements of position with respect to the issues raised by the court's opinion. The Respondent filed a position statement.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Member Emanuel is recused and took no part in the consideration of this case.

³ The judge's decision is attached to the vacated 2013 decision and order at 359 NLRB at 996.

Board's order requiring the Respondent to cease and desist from "[b]roadly prohibiting employees from speaking to the media[.]" On September 11, 2017, the court denied the Respondent's petition and enforced the Board's Order against the Respondent. The court also granted the Union's petition and remanded the case to the Board to resolve the issue of whether the Respondent's written policy should be rescinded. The court found that the oral ban and the written policy are "closely connected," and that, because the matter was fully litigated, "due process does not bar the relief the Union seeks—rescission of the written policy[.]" 871 F.3d at 790.

Discussion

We have considered the decision and the record in light of the court's remand order and the Respondent's statement of position. Having accepted, as the law of the case, the court's determinations that due process does not bar the relief sought by the Union, and that the unlawful oral ban and the written policy are to the same effect, we shall modify our Order in this case. Accordingly, in addition to the remedies we previously ordered and that were enforced by the court, we shall further order the Respondent to rescind its written policy to the extent that it prohibits employees from speaking to the media "on behalf of . . . its employees" and broadly requires employees to direct members of the media to management.⁴ We shall also substitute a new notice to conform to the Order as modified.

ORDER⁵

The National Labor Relations Board hereby orders that the Respondent, Veritas Health Services, Inc. d/b/a Chino Valley Medical Center, Chino Valley, California, its officers, agents, successors, and assigns, shall, in addition to all affirmative action previously ordered by the Board and enforced by the court, take the action set forth in the Order reported at 362 NLRB No. 32 as modified:

⁴ We do not reach the Respondent's argument that maintenance of the written policy is lawful under *Boeing Co.*, 365 NLRB No. 154 (2017). Rather, consistent with the remand, we conclude that a full and complete remedy for the unlawful oral ban on employees speaking with the media requires that the Respondent rescind the written policy to the same effect. Our conclusion as to the appropriate remedy for the unlawful oral ban is not predicated on a finding that the written policy constitutes an independent violation of the Act.

⁵ We reject the Respondent's argument that it can no longer rescind the written policy because it has modified it by adding "appropriate Section 7 disclaimers." That the Respondent may have made modifications to the policy has no bearing on the Board's obligation to consider, consistent with the court's remand, whether it should order rescission of the written policy to effectuate a complete remedy for the Respondent's unfair labor practice. The Respondent is not precluded from renewing those arguments during compliance proceedings.

1. Insert the following as paragraphs 2(b) and (c) and reletter the subsequent paragraphs.

"(b) Rescind the written policy located in the "Confidentiality" section of its employee handbook to the extent that it prohibits employees from speaking to the media "on behalf of . . . its employees" and broadly requires employees to refer members of the media to the Respondent."

"(c) Furnish employees with an insert for the current employee handbook that (1) advises that the unlawful provisions have been rescinded, or (2) provides lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or publish and distribute to employees revised employee handbooks that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provisions."

2. Substitute the attached notice for the notice attached to the decision reported at 362 NLRB No. 32.

Dated, Washington, D.C. July 24, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten to close the facility and terminate employees if they select a union.

WE WILL NOT threaten employees with loss of benefits if they select the United Nurses Associations of California/Union of Healthcare Professionals, NUHHCE, AFSCME, AFL-CIO (the Union) as their collective-bargaining representative.

WE WILL NOT coercively interrogate employees about their union activities.

WE WILL NOT impliedly threaten employees with layoffs if they support a union.

WE WILL NOT tell employees they might lose the family atmosphere and flexibility of scheduling at Chino Valley if they select the Union.

WE WILL NOT give employees the impression that their union activities are under surveillance.

WE WILL NOT threaten to discipline employees because they engaged in union activities.

WE WILL NOT inform employees that they can no longer take vacations longer than 2 weeks because the employees selected the Union to represent them.

WE WILL NOT tell employees that the family atmosphere at Chino Valley is over and that from now on Chino Valley will begin strictly enforcing its policies and procedures, including tardiness, because the employees voted for the Union.

WE WILL NOT broadly prohibit employees from speaking to the media, including about the Union or about terms and conditions of employment.

WE WILL NOT serve subpoenas on employees and unions that request information about employees' union activities, under circumstances where that information is not related to any issue in the legal proceeding.

WE WILL NOT unilaterally change wages, hours, and other terms and conditions of employment of employees without first giving the Union notice and an opportunity to bargain about such changes.

WE WILL NOT more strictly enforce a tardiness rule and discipline employees pursuant to that more strictly enforced rule because employees supported the Union.

WE WILL NOT more strictly enforce a tardiness rule and discipline employees pursuant to that more strictly enforced rule without first giving the Union an opportunity to bargain concerning the change.

WE WILL NOT discipline employees who fail to attend mandatory meetings.

WE WILL NOT discharge or otherwise discriminate against employees for supporting the Union or any other union.

WE WILL NOT begin disciplining employees for failing to attend mandatory meetings without first giving the Union an opportunity to bargain concerning the change.

WE WILL NOT terminate the practice of paying part-time employees for the time spent attending classes needed to maintain the certifications necessary to perform their work at Chino Valley without first allowing the Union an opportunity to bargain concerning that change.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All full-time, regular part-time and regular per diem registered nurses employed by us at our 5451 Walnut Avenue, Chino, California facility in the following departments: Emergency Services, Critical Care Services/Intensive Care Unit, Surgery, Post-Anesthesia Care Unit, Outpatient Services, Gastrointestinal Laboratory, Cardiovascular Catheterization Laboratory, Radiology, Telemetry/Direct Observation Unit and Medical/Surgical.

WE WILL rescind the written policy located in the "Confidentiality" section of our employee handbook to the extent that it prohibits employees from speaking to the media "on behalf of . . . its employees" and broadly requires employees to refer members of the media to the Administration.

WE WILL furnish you with an insert for the current employee handbook that (1) advises that the unlawful provisions have been rescinded, or (2) provides lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or WE WILL publish and distribute revised employee handbooks that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provisions.

WE WILL rescind the discipline we imposed as a result of our stricter enforcement of the tardiness rule and restore our prior practice.

WE WILL rescind the discipline we imposed on employees who failed to attend mandatory meetings.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discipline of employees, and WE WILL, within 3 days thereafter, notify the employees in writing that this has

been done and that the discipline will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, offer Ronald Magsino full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Ronald Magsino whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest compounded daily.

WE WILL compensate Ronald Magsino for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Ronald Magsino, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL restore the practice of paying part-time employees for the time spent attending classes needed to maintain the certifications necessary to perform their work at Chino Valley, and WE WILL make whole those

employees for any losses resulting from the unlawful termination of that practice, with interest compounded daily.

WE WILL furnish to the Union in a timely manner the relevant information requested by the Union on April 9, 2010.

VERITAS HEALTH SERVICES, INC. D/B/A CHINO
VALLEY MEDICAL CENTER

The Board's decision can be found at www.nlrb.gov/case/31-CA-029713 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

